

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to five-year rules review
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 1, “Description of Organization and Procedures Before the Division,” Chapter 3, “Posting, Inspections, Citations and Proposed Penalties,” Chapter 4, “Recording and Reporting Occupational Injuries and Illnesses,” Chapter 9, “Discrimination Against Employees,” Chapter 10, “General Industry Safety and Health Rules,” Chapter 160, “Employer Requirements Relating to Non-English Speaking Employees,” Chapter 169, “General Requirements for Athletic Events,” Chapter 176, “Professional Kickboxing,” Chapter 215, “Minimum Wage Scope and Coverage,” Chapter 216, “Records to Be Kept by Employers,” Chapter 217, “Wage Payments,” and Chapter 220, “Application of the Fair Labor Standards Act to Employees of State and Local Governments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 91.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 88, 90A, 91, 91D and 91E.

Purpose and Summary

This rule making proposes amendments based on the Division of Labor Services’ five-year rules review.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on January 17, 2023. Comments should be directed to:

Lanny Zieman
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309
Email: lanny.zieman@iwd.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.12(1) as follows:

1.12(1) *Filing a request.* A request for access to a record may be sent to the division at ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319, or ~~open.records@iwd.iowa.gov~~ submitted at iowaopenrecords.nextrequest.com. A request for access may be sent via facsimile to (515)281-7995 or may be delivered to the division’s office at 150 Des Moines Street, Des Moines, Iowa. If a request for access to a record is misdirected, division personnel will promptly forward the request to the appropriate person within the division.

ITEM 2. Amend rule 875—1.71(17A) as follows:

875—1.71(17A) *Waiver of procedures.* Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this ~~division~~ chapter. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

ITEM 3. Amend subrule 1.85(6) as follows:

1.85(6) “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 4. Amend subrules 3.22(1) and 3.22(2) as follows:

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a ~~cassette tape~~ recording of an oral presentation, or a ~~videotape~~ video recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, ~~tape~~ recording, or ~~videotape~~ video recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, ~~cassette-tape~~ recording, or ~~videotape~~ video recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer’s records of a training program.

ITEM 5. Amend paragraph **4.3(2)“a”** as follows:

a. Completing the incident report form available at www.iowaosha.gov and faxing the completed form to (515)242-5076 (515)281-7995 or sending the completed form to osha@iwd.iowa.gov;

ITEM 6. Amend rule 875—9.3(88) as follows:

875—9.3(88) General requirements of Iowa Code section 88.9(3). ~~Section Iowa Code section 88.9(3)~~ provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Instituted or caused to be instituted any proceeding under or related to the Act;
3. Testified or is about to testify in any proceeding under the Act or related to the Act; or
4. Exercised on the employee's own behalf or on behalf of others any right afforded by the Act.

Any employee who believes that the employee has been discriminated against in violation of Iowa Code section 88.9(3) may, within 30 days after such violation occurs, lodge a complaint with the commissioner of labor alleging the violation. The commissioner shall then cause an appropriate investigation to be made. If, as a result of the investigation, the commissioner determines that the provisions of Iowa Code section 88.9(3) have been violated, civil action may be instituted in any appropriate district court, to restrain violations of Iowa Code section 88.9(3) and to obtain other appropriate relief, including rehiring or reinstatement of the employee to the former position with backpay. ~~Section Iowa Code section 88.9(3)~~ further provides for notification of complainants by the commissioner of determinations made pursuant to their complaints.

ITEM 7. Amend rule 875—9.4(88) as follows:

875—9.4(88) Persons prohibited from discriminating. Iowa Code section 88.9(3) provides that a person shall not discharge or in any manner discriminate against an employee because the employee has exercised rights under the Act. ~~Section Iowa Code section 88.3(9)~~ defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of Iowa Code section 88.9(3) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. ~~Section Iowa Code section 88.9(3)~~ would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

ITEM 8. Amend subrule 9.5(1) as follows:

9.5(1) All employees are afforded the full protection of Iowa Code section 88.9(3). For purposes of the Act, an employee is defined as "an employee of an employer who is employed in a business of his employer."

ITEM 9. Amend subrule 9.6(2) as follows:

9.6(2) At the same time, to establish a violation of Iowa Code section 88.9(3), the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Iowa Code section 88.9(3) has been violated. Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

ITEM 10. Amend subrule 9.10(1) as follows:

9.10(1) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this Act" is also prohibited by Iowa Code section 88.9(3). Examples of proceedings which could arise specifically under the Act would be inspections of workplaces under Iowa Code section 88.6, an employee contest of an abatement date under Iowa Code section 88.8(3), an employee application for modification or revocation of a variance under Iowa Code section 88.5 and an employee appeal of an order of the employment appeal board under Iowa Code section 88.9(1). In determining whether a "proceeding" is "related to" the Act, the considerations discussed in rule ~~875—8.9(88)~~ 875—9.9(88) would also be applicable.

ITEM 11. Amend subrule 9.15(2) as follows:

9.15(2) Iowa Code section 88.9(3) provides that an employee who believes discriminatory actions have occurred in violation of Iowa Code section 88.9(3) “may, within 30 days after such violation occurs,” file a complaint with the commissioner. The major purpose of the 30-day period in this provision is to allow the commissioner to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances which do not justify tolling of the 30-day period. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

ITEM 12. Amend rule 875—9.16(88) as follows:

875—9.16(88) Notice of determination. Iowa Code ~~subsection~~ section 88.9(3) provides that within 90 days of the filing of a complaint, the commissioner is to notify a complainant whether prohibited discrimination occurred. This 90-day provision is considered to be directory in nature. While every effort will be made to notify complainants of the commissioner’s determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in Iowa Code ~~subsection~~ section 88.9(3).

ITEM 13. Amend rule 875—9.18(88) as follows:

875—9.18(88) Arbitration or other agency proceedings.

9.18(1) An employee who files a complaint under Iowa Code section 88.9(3) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board or the ~~Iowa department of personnel~~ department of administrative services. The commissioner’s jurisdiction to entertain Iowa Code section 88.9(3) complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of the other agencies or bodies. The commissioner may file action in district court regardless of the pendency of other proceedings. However, the commissioner also recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Iowa Code section 88.9(3) complaints. Where a complainant is in fact pursuing remedies other than those provided by Iowa Code section 88.9(3), postponement of the commissioner’s determination and deferral to the results of such proceedings may be in order.

9.18(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Iowa Code section 88.9(3) and those proceedings are not likely to violate the rights guaranteed by Iowa Code section 88.9(3). The factual issues in such proceedings must be substantially the same as those raised by ~~a~~ an Iowa Code section 88.9(3) complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

9.18(3) A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, the dismissal will not ordinarily be regarded as determinative of the Iowa Code section 88.9(3) complaint.

ITEM 14. Amend rule 875—9.21(88) as follows:

875—9.21(88) Walkaround pay disputes. An employer’s failure to pay employees for time during which they are engaged in walkaround inspections, or in other inspection-related activities, such as responding to questions of compliance officers, or participating in the opening and closing conferences, is discriminatory under ~~section~~ Iowa Code section 88.9(3) so long as neither the number of employees participating nor the time required to express employee concerns is excessive. An authorized employee representative shall be given the opportunity to accompany on the physical inspection pursuant to Iowa Code section 88.6(4) and rule 875—3.6(88).

This rule is intended to implement Iowa Code section 88.9(3).

ITEM 15. Amend rule 875—9.22(88) as follows:

875—9.22(88) Employee refusal to comply with safety rules. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Iowa Code section 88.9(3). This situation should be distinguished from refusals to work, as discussed in rule ~~875—8.12(88)~~ 875—9.12(88).

ITEM 16. Amend subrule 10.2(3) as follows:

10.2(3) However, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in 1910.12, 1910.261, 1910.262, 1910.263, 1910.264, 1910.265, 1910.266, ~~1910.267~~, and 1910.268 of 29 CFR 1910, to the extent that none of such particular standards applies.

ITEM 17. Amend ~~875—Chapter 29~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~88.5(12)~~ 88.5(11).

ITEM 18. Amend rule 875—160.1(91E) as follows:

875—160.1(91E) Purpose and scope. The rules in this chapter are intended to implement and clarify the division of ~~labor’s~~ labor services’ responsibilities under Iowa Code chapter 91E. These rules apply to employees employed on an hourly basis. These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

ITEM 19. Amend ~~875—Chapter 169~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 90A ~~as amended by 2013 Iowa Acts, Senate File 430.~~

ITEM 20. Rescind rule 875—176.2(90A) and adopt the following **new** rule in lieu thereof:

875—176.2(90A) GLORY rules adopted by reference. The labor commissioner adopts by reference the kickboxing rules and regulations of the GLORY Kickboxing used for all GLORY Kickboxing matches and events. These rules and regulations are published by GLORY at glorykickboxing.com/rules.

ITEM 21. Amend rule 875—176.3(90A) as follows:

875—176.3(90A) Professional boxing rules adopted by reference. The following rules from 875—Chapter 173, Professional Boxing, are adopted by reference as kickboxing rules:

- ~~1. 875—173.3(90A) (Age restrictions);~~
- ~~2. 1. 875—173.6(90A) (Number (Limitations on number of bouts);~~
- ~~3. 2. 875—173.7(90A) (Contestant’s Contestants’ arrival); and~~
- ~~4. 3. 875—173.18(90A) (Attendance of commissioner);~~
- ~~5. 875—173.22(90A) (Public safety);~~
- ~~6. 875—173.25(90A) (Locker rooms); and~~
- ~~7. 875—173.26(90A) (Contracts).~~

ITEM 22. Amend rule 875—215.1(91D) as follows:

875—215.1(91D) Requirement to pay.

~~215.1(1)~~ Every employer shall pay to each of the employer's employees performing work in this state wages of not less than the applicable minimum hourly wage set forth in Iowa Code section 91D.1 as amended by 2007 Iowa Acts, House File 1, unless otherwise noted in 875—Chapters 215 through 220.

~~215.1(2)~~ Rescinded IAB 12/12/01, effective 1/16/02.

~~215.1(3)~~ Rescinded IAB 11/23/94, effective 1/1/95.

ITEM 23. Amend subrule 215.2(1) as follows:

215.2(1) The 90-calendar-day period set forth in Iowa Code section 91D.1(1) "d" as amended by 2007 Iowa Acts, House File 1, is counted from the employee's initial day of work.

ITEM 24. Amend paragraph **215.3(11)"a"** as follows:

a. Is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in 215.3(11) "b," whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than ~~\$250,000~~ \$300,000;

ITEM 25. Amend subrule 216.1(4) as follows:

216.1(4) *Initial employment wage rate—employer's record.* If the employer pays an initial employment wage rate as specified in Iowa Code section ~~91D.1(1)"d"~~ as amended by 2007 Iowa Acts, House File 1, 91D.1(1)"d," the employer's records shall include an indication as to the starting and ending date the employee is paid the initial employment wage rate.

SOURCE: 29 CFR 516.1.

ITEM 26. Amend rule 875—216.4(91D) as follows:

875—216.4(91D) Posting of notices. Every employer employing any employees subject to the minimum wage provisions of the Iowa minimum wage Act shall post and keep posted a notice explaining the Act, as prescribed by the division of labor services, in conspicuous places in every establishment where such employees are employed so as to permit them to readily observe a copy.

SOURCE: 29 CFR 516.4.

ITEM 27. Amend rule 875—216.8(91D) as follows:

875—216.8(91D) Computations and reports. Each employer required to maintain records under this chapter shall make extension, recomputation, or transcription of the records and shall submit to the division of labor services the reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the commissioner may request in writing.

SOURCE: 29 CFR 516.8.

ITEM 28. Amend subrule 216.30(3) as follows:

216.30(3) The initial employment wage rate established in Iowa Code section 91D.1(1) "d" as amended by 2007 Iowa Acts, House File 1, shall be the basis for initial employment under this rule. The amount approved by a special order by the Secretary of Labor shall be effective if more than the amount specified in Iowa Code section ~~91D.1(1)"d"~~ as amended by 2007 Iowa Acts, House File 1, 91D.1(1)"d." If the Secretary of Labor's approved rate is lower than the initial employment wage rate, the initial employment wage rate shall be applicable for the period covered by the Secretary of Labor's order.

ITEM 29. Amend subrule 217.39(2) as follows:

217.39(2) The amount of any individual's earnings withheld by means of any legal or equitable procedure for the payment of any debt may not exceed the restriction imposed by state or federal garnishment laws; Iowa Code section ~~642.21(1989)~~ 642.21 or the federal Consumer Protection Act, Title III, 15 U.S.C. Sections ~~1671-1677(1982)~~ 1671-1677.

SOURCE: 29 CFR 531.39.

ITEM 30. Amend paragraph **220.226(2)“c”** as follows:

c. Time spent in the training described in ~~220.226(1)“a”~~ paragraph 220.226(2)“a” or “b” is not compensable, even if all or part of the cost of the training is borne by the employer.